

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1761 (PCB FFF 04-08) Public Records Exemption
SPONSOR(S): Future of Florida's Families and Fiorentino
TIED BILLS: HB 1759 **IDEN./SIM. BILLS:** SB 2826

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Children's Services (Sub)	5 Y, 0 N	Preston	Liem
2) Future of Florida's Families	13 Y, 0 N	Preston	Liem
3) Insurance	17 Y, 3 N	Tinney	Cooper
4) State Administration		Williamson	Everhart
5)			

SUMMARY ANALYSIS

HB 1761 creates a public records exemption for records obtained by the Department of Revenue from an insurer for purposes of child support enforcement. Such may be disclosed only for locating a parent who owes child support or for establishing, enforcing, or modifying a child support obligation.

The bill appears to have a minimal fiscal impact on state government. See "FISCAL IMPACT ON STATE GOVERNMENT" section for further details.

The bill will require a two-thirds vote of the members present and voting for passage.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1761c.sa.doc
DATE: April 12, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

Not applicable.

B. EFFECT OF PROPOSED CHANGES:

Background

HB 1761 creates s. 409.25659, F.S., providing for the development and establishment of an insurance claim data exchange. The purpose of the exchange is to provide for the identification of settlement payments on insurance liability claims which can then be applied to child support arrearages in Title IV-D cases, such as child support enforcement cases.

Effect of Bill

This bill creates a public records exemption for records obtained by the Department of Revenue from insurers for the purpose of determining whether a person receiving a claim also owes past due child support. If a match is not made, such records regarding private citizens are maintained by the department, in addition to those records receiving a match. Gathering and maintaining personal information on persons for purposes of child support enforcement, when such persons do not owe child support, could be considered an intrusion into the right of one's privacy, especially since those persons are unaware that government has collected such information.

This bill provides that such confidential and exempt records may only be disclosed for the purpose of locating an individual or establishing, modifying, or enforcing a child support obligation.

This bill provides for future review and repeal of the exemption on October 2, 2009, pursuant to the Open Government Sunset Review Act of 1995. It also provides a statement of public necessity.

C. SECTION DIRECTORY:

Section 1. Creates an exemption for records obtained by the Department of Revenue under an insurance claim data exchange system.

Section 2. Provides for future review and repeal of the exemption.

Section 3. Provides a statement of public necessity.

Section 4. Provides a contingent effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. This bill does not create, modify, amend, or eliminate a state revenue source.

2. Expenditures:

The public records law in general creates a significant, although unquantifiable, increase in government spending. Government employees must locate requested records, and must examine every requested record to determine if a public records exemption prohibits release of the record. There is likely no marginal fiscal impact to a single public records exemption; the location and examination process remains whether or not a particular public records exemption exists.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None. This bill does not affect local governments.

2. Expenditures:

None. This bill does not affect local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not affect county or municipal government.

2. Other:

Article I, s. 24(c), Florida Constitution, requires a two-thirds vote of the members present and voting for passage of a newly created public records or public meetings exemption. Thus, HB 1761 requires a two-thirds vote for passage.

This exemption could raise constitutional concerns, because the exemption could be considered overly broad because it makes confidential and exempt information regarding a noncustodial parent who owes past due child support. Information regarding such parent is public, via other records held by the Department of Revenue, therefore, it is unclear why such information should be made confidential and exempt when submitted by insurers.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Public Records Law

Article I, s. 24(a), Florida Constitution, sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature may, however, provide by general law for the exemption of records from the requirements of Article I, s. 24(a), Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.

Public policy regarding access to government records is also addressed in the Florida Statutes. Section 119.07(1), F.S., also guarantees every person a right to inspect, examine, and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act of 1995¹ provides that a public records or public meetings exemption may be created or maintained only if it serves an identifiable public purpose, and may be no broader than is necessary to meet one of the following public purposes: 1. Allowing the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption; 2. Protecting sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety. However, only the identity of an individual may be exempted under this provision; or, 3. Protecting trade or business secrets.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.

¹ Section 119.15, F.S.